IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 12, 2007 Session

IN RE ESTATE OF MARY V. HENKEL, DECEASED

A Direct Appeal from the Circuit Court for Davidson County
No. 05P-1804 The Honorable Randy Kennedy, Judge

No. M2006-02641-COA-R3-CV - Filed November 16, 2007

After procuring an administrator of the estate of an elderly decedent, the Tennessee Bureau of TennCare filed a claim against the estate seeking reimbursement of properly paid benefits to the nursing facility on decedent's behalf. The heirs excepted to the claim, and the trial court issued an opinion barring the claim as untimely under T.C.A. §30-2-310(b) (2001) and ***In Re: Estate of Luck***, No. W2004-01554-COA-R3-CV, 2005 WL 1356448 (Tenn. Ct. App. June 7, 2005). The Bureau appeals. We affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed

W. FRANK CRAWFORD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S. and DAVID R. FARMER, J., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; L. Vincent Williams, Deputy Attorney General for Appellant, Tennessee Bureau of TennCare

Laura Tek of Madison, Tennessee for Appellee, Estate of Mary V. Henkel, Deceased

OPINION

The material facts in this case are undisputed. On July 1, 1991, Mary Virginia Jones Henkel ("Decedent") became the beneficiary of medical assistance paid through the Tennessee Bureau of TennCare ("Bureau," or "Appellant"). Ms. Henkel died on February 19, 2003. In March, 2003, Guardian and Trust Company ("GTC"), Conservator for Ms. Henkel, sent the Bureau a final accounting for the conservatorship, and the Bureau responded by sending GTC a letter and printout of medical services paid by the State. GTC forwarded the communication to Ms. Henkel's children.

On June 11, 2003, October 17, 2003, and November 6, 2003, the Bureau sent letters notifying Ms. Henkel's children that the Bureau may have an interest in the estate. However, the Bureau did not expressly demand reimbursement for medical assistance costs paid on behalf of Ms. Henkel. On or about January 6, 2004, the Bureau received a request for release from Ms. Henkel's son, Larry.

In response, the Bureau sent another letter to Larry Henkel, again informing him that the Bureau may have an interest in his mother's estate.

Ms. Henkel's children did not seek to open an estate. Consequently, on September 8, 2005, in accordance with T.C.A. § 30-1-301 *et seq.*, the Bureau filed a complaint to appoint an administrator for Ms. Henkel's estate (the "Estate," or "Appellee"). As provided for in T.C.A. § 30-1-303, the complaint named Larry Henkel, David Henkel, and Judy Clifford as defendants. Letters of Administration were issued to Jonathan Richardson on September 9, 2005. On November 4, 2005, Larry Henkel filed an answer and counter-petition for letters of administration and transfer to the Circuit Court. A document purporting to be Ms. Henkel's will was attached to Larry Henkel's petition.

The matter was transferred to the Seventh Circuit Probate Court on November 30, 2005. Thereafter, on December 2, 2005, the trial court declared the appointment of Mr. Richardson as administrator to be void *ab initio*. Following a hearing, on January 20, 2006, the trial court entered an Order appointing Mr. Richardson administrator *pendente lite*.

On January 30, 2006, the Bureau filed a claim against the Estate for $287,646.30. This claim was made for properly paid medical benefits pursuant to T.C.A. § 71-5-116(c) (2004), which reads as follows:

> (c)(1) There shall be no adjustment or recovery of any payment for medical assistance correctly paid on behalf of any recipient pursuant to this part from the recipient's estate, except in the case of a recipient who was fifty-five (55) years of age or older at the time the recipient received medical assistance or services pursuant to this part. In that case, adjustment or recovery from the recipient's estate may be pursued only after the death of the individual's surviving spouse, if any, and only at a time when the individual has no surviving child who is under eighteen (18) years of age or no surviving child, as defined in § 1614 of the Social Security Act, who is blind or permanently and totally disabled, or a child who became blind or permanently and totally disabled after reaching majority, if the TennCare bureau and the personal representative agree, or, in the event of a disagreement, the court, after de novo review, finds that repayment would constitute an undue hardship to the blind or disabled child.

Pursuant to this statute, the Bureau filed the Affidavit of Jeanie Taylor, Administrative Services Assistant with the Estate Recovery Unity for the Bureau of TennCare, which Affidavit states that Ms. Henkel was over fifty-five years of age at the time she received the medical benefits, that she was not survived by a spouse or any children under the age of twenty-one or who were blind or permanently and totally disabled.

The Bureau also requested that the administrator publish notice to creditors. That notice was published and ran for three consecutive weeks beginning on April 13, 2006. On the same day, Larry

Henkel filed a claim against the Estate for $11,679.97 for property taxes allegedly paid for the years 1994 to 2005. On April 13, 2006, on behalf of Decedent's heirs, Larry Henkel excepted to the Bureau's claim, alleging that the "Estate is not indebted to the claimant in any way whatsoever." Mr. Richardson, the administrator, did not take a position on the Bureau's claim.

A hearing was held on June 22, 2006. On October 30, 2006, the trial court entered its order barring the Bureau's claim. Specifically, the trial court held that, "based upon In re Estate of Luck, 2005 WL 1356448 (Tenn. Ct. App. June 7, 2005), read in conjunction with T.C.A. § 30-2-310(b), which makes the one year statute of limitation applicable to the State of Tennessee, the claim of TennCare against the Estate of Mary Henkel was untimely filed and is therefore barred." The Bureau filed a timely notice of appeal. The sole issue before this Court is whether the trial court erred in barring the Bureau's claim as untimely filed.

Because this case was tried by the court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm absent error of law. ***See*** Tenn. R.App. P. 13(d). As noted above, the facts in this case are undisputed. The sole issue before us involves statutory interpretation and, as such, is a question of law. Consequently, our review of the trial court's order is *de novo* upon the record with no presumption of correctness accompanying the trial court's conclusions of law. ***See*** Tenn. R. App. P. 13(d); ***Waldron v. Delfss***, 988 S.W.2d 182, 184 (Tenn.Ct.App.1998); ***Sims v. Stewart***, 973 S.W.2d 597, 599-600 (Tenn.Ct.App.1998).

In construing statutes, the Court's role is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. ***Sallee v. Barrett***, 171 S.W.3d 822 (Tenn.2005); ***McGee v. Best***, 106 S.W.3d 48 (Tenn.Ct.App.2002). In ***McGee***, the Court said:

> The rule of statutory construction to which all others must yield is that the intention of the legislature must prevail. ***Mangrum v. Owens***, 917 S.W.2d 244, 246 (Tenn.Ct.App.1995)(citing ***Plough, Inc. v. Premier Pneumatics, Inc***., 660 S.W.2d 495, 498 (Tenn.Ct.App.1983); ***City of Humboldt v. Morris***, 579 S.W.2d 860, 863 (Tenn.Ct.App.1978)). "[L]egislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, when read in the context of the entire statute, without any forced or subtle construction to limit or extend the import of the language." ***Id***. (citing ***Worrall v. Kroger Co.***, 545 S.W.2d 736, 738 (Tenn.1977)). The Court has a duty to construe a statute so that no part will be inoperative, superfluous, void or insignificant. The Court must give effect to every word, phrase, clause, and sentence of the Act in order to achieve the Legislature's intent, and it must construe a statute so that no section will destroy another. Id. (citing City of ***Caryville v.. Campbell County***, 660 S.W.2d 510, 512 (Tenn.Ct.App.1983); ***Tidwell v. Collins***, 522 S.W.2d 674, 676 (Tenn.1975).

Id. at 64.

In ***In Re: Estate of Daughrity***, 166 S.W.3d 185 (Tenn. Ct. App. 2004), this Court addressed the applicability of the statute of limitations to claims against estates by the Bureau. The ***Daughrity*** Court held that there are two limitations periods that apply to creditor's claims under Tennessee probate law. First, T.C.A. § 30-2-306 and § 30-2-307 establish a four month limitations period applicable to creditor's claims. These statutes were applicable in the ***Daughrity*** case, and the Court specifically held that the four month statute of limitations contained therein did not apply to the Bureau under the doctrine of *nullum tempus occurit regi*, i.e. time does not run against the king, to wit:

> The courts of this state have consistently held that, when the State of Tennessee, acting through its various departments, files a claim in a governmental capacity, statutes of limitations do not bar the state's claim ***absent an express legislative directive to the contrary***.
>
> The common law doctrine of *nullum tempus occurit regi*, which is literally translated as "time does not run against the king," prevents an action brought by the State from being dismissed due to the expiration of the statutory period of limitations normally applicable to the specific type of action. This doctrine has been justified on the ground "that the public should not suffer because of the negligence of its officers and agents ..." ***State ex rel. Board of University & School Lands v. Andrus***, 671 F.2d 271, 274 (8th Cir.1982).... This doctrine is not to be lightly regarded, as we have repeatedly stated that statutes of limitations are looked upon with disfavor in actions brought by the State, and ***will not be enforced in the absence of clear and explicit statutory authority to do so. Dunn v. W.F. Jameson & Sons, Inc***., 569 S.W.2d 799, 802 (Tenn.1978); ***Anderson v. Security Mills***, 175 Tenn. 197, 133 S.W.2d 478 (1939).

Daughrity, 188 S.W.3d at 191 (Emphasis added).

The second limitations period that applies to creditor's claims against an estate is found at T.C.A. § 30-2-310. This is the statute at issue in the present case and it provides, in pertinent part, as follows:

> (a) All claims and demands not filed with the probate court clerk, as required by the provisions of §§ 30-2-306 -- 30-2-309, or, if later, in which suit shall not have been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred.

> (b) Notwithstanding the provisions of subsection (a), all claims and demands not filed ***by the state*** with the probate court clerk, as required by the provisions of §§ 30-2-306--30-2-309, or, if later, ***in which suit shall not have been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred***. This statute of limitations shall not apply to claims for state taxes. Such claims shall continue to be governed by § 67-1-1501.

(Emphasis added).

The holding in ***Daughrity*** hinges upon this Court's finding that § 30-2-306 and § 30-2-307 contain no clear and explicit language from which to conclude that the claims of the State, acting in its official capacity, are included in the four-month limitations period. However, in the instant case, the applicable statute is T.C.A. § 30-2-310(b), *supra*, which, by its plain language, does include claims made "by the state" against an estate in the twelve month limitations period. This is a distinction that the ***Daughrity*** Court notes:

> The chancellor's order relied on section 30-2-310 to find that the Bureau's claim was time barred. The chancellor was apparently relying on the language in subsection (b), where the legislature ***expressly made the twelve (12) month limitations period applicable to the state***....

Daughrity, 166 S.W.3d 194, note 4 (Emphasis added).

The ***Daughrity*** Court's note that T.C.A. § 30-2-310(b) applies the one year limitations period to State claims is supported by the legislative history. T.C.A. § 30-2-310 was amended in 2000 to add subsection (b). On May 9, 2000, Steve Cobb, a representative of the Tennessee Bar Association, answered the Senate committee's questions on Senate Bill 2209, to wit:

> Last week you [the Senate Committee] asked me to take a look at this [the proposed amendment to T.C.A. § 30-2-310, adding subsection (b)]. I circulated this to quite a number of practitioners in the field.... They would recommend that you set a statute of limitations of one year here and we think that would work very well. There were comments last week by someone from the state. If I understood the person correctly she was concerned about the fact that in the case of a state [sic] taxes, death taxes, however you want to call them the state might not even know about the death within a year. I'm informed by all the people I talked to that this bill doesn't affect that whatsoever. There's a separate statute of limitations of three years that governs taxes. **So this is only the kinds of credits or claims against the estate of the decedent that are in existence at the time he or she dies so the state is on notice the moment the person dies,**

> **even beforehand that they're owed some money and so we think that a year to check on this situation and try to follow up is plenty.** An average citizen has four months from the time that notice to creditors is [published] to file...that notice.

In the case of TennCare services, the State is on notice when a recipient dies because TennCare stops paying benefits at that point. In the instant case, the Bureau asserts, *inter alia*, that, because Ms. Henkel's heirs did not attempt to open an estate (and because it is allegedly possible for heirs to wait beyond the one year statute to open an estate, thereby barring these types of state claims), the time limitation for its claim begins to run at the appointment of an administrator. We find this argument untenable. Here, the heirs did not seek to open an estate because only the real property, which passed to the heirs at Ms. Henkel's death, was involved. Nonetheless, the Bureau, like any other creditor, may make an application to appoint an administrator, which is exactly what the Bureau did in this case, albeit nearly two and one-half years after Ms. Henkel's death. In short, if TennCare services is on notice that it may have a claim against an estate, either by virtue of the fact that TennCare has paid benefits on behalf of an individual prior to death, or has ceased payment at the beneficiary's death, then it is incumbent upon the Bureau to protect its interest by seeking to open an estate on its own motion. That being said, this Court does not conclude that the Bureau, although acting in its official capacity, has unlimited time to seek reimbursement.

In its brief, the Bureau asserts that this Court's opinion in ***In re Estate of Luck***, 2005 WL 1356448 (Tenn. Ct. App. June 7, 2005) was incorrectly decided and that, consequently, the trial court erred in relying on same to bar the Bureau's claim. In ***Estate of Luck***, we addressed the estate of William Luck, which was not admitted to probate until well over a year after his death. Goldsmith's filed a claim against the Luck Estate; however, the claim was not filed until some twenty-one months after Mr. Luck's death. The estate excepted to the claim, asserting that same was barred by the one year statute of limitations. This Court held that Goldsmith's claim was barred under T.C.A. § 30-2-307(a)(1)(B), which provides: "[i]f a creditor receives actual notice less than sixty (60) days before the date which is twelve (12) months from the decedent's date of death or receives no notice, such creditor's claim shall be forever barred unless filed within twelve (12) months of the decedent's date of death." ***In re Estate of Luck***, 2005 WL 1356448, at *3-4. In reaching this decision, we reasoned as follows:

> While we recognize the probate court's duty to follow the precedents set forth by this Court, ***Barger v. Brock***, 535 S.W .2d 337, 341 (Tenn.1976), our decision in ***Estate of Divinny*** and its progeny have misconstrued the statute of limitations applicable to a creditor's claim against an estate. The exception found in section 30-2-307(a)(1)(B) of the Tennessee Code expressly and unambiguously states that a "creditor's claim *shall be barred* unless filed within twelve (12) months from the decedent's date of death." ***See*** Tenn.Code Ann. § 30-2-307(a)(1) (2003) (emphasis added). Regarding section 30-2-307(a)(1)(B), our supreme court has stated:

> Tenn.Code Ann. § 30-2-307(a)(1)(B) provides for an absolute one year limit on the filing of claims against the estate, and this limitations period applies whether the creditor has received proper notice or no notice at all. Thus, [the creditor's] claim was required to be filed within a year of [the decedent's] death.

In re Estate of Jenkins v. Guyton, 912 S.W.2d 134, 138 n. 3 (Tenn.1995); ***see also Bowden v. Ward***, 27 S.W.3d 913, 918-19 (Tenn.2000); ***In re Estate of Key v. Hamilton County Nursing Home***, No. 03A01-9810-CH-00319, 1999 Tenn.App. LEXIS 201, at *12-13 (Tenn.Ct.App. Mar. 24, 1999).

Moreover, to construe section 30-2-307(a)(1)(B) of the Tennessee Code to mean that, when an estate is not opened for more than a year after the decedent's death, a creditor may still file a claim when the estate is eventually opened would make that statute repugnant to other parts of Title 30, Chapter 2, Part 3. ***See Tenn. Elec. Power Co. v. City of Chattanooga***, 114 S.W.2d 441, 444 (Tenn.1937) ("A construction will be avoided, if possible, that would render one section of the act repugnant to another."). As we noted in ***Brady***, the legislature amended section 30-2-306 of the Tennessee Code in 1999 by adding subsection (f) which provides that the personal representative of the estate is not required to provide the creditors of an estate with notice "if the letters testamentary or of administration are issued more than one (1) year from the decedent's date of death." Tenn.Code Ann. § 30-2-306(f) (2003); 1999 Tenn. Pub. Acts. ch. 491, § 5. Furthermore, section 30-2-310(a) of the Tennessee Code provides:

> *All claims* and demands not filed with the probate court clerk, as required by the provisions of §§ 30-2-306-30-2-309, or if later, in which suit shall not have been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred.

Tenn.Code Ann. § 30-2-310(a) (2003) (emphasis added); ***see also In re Estate of Cunningham***, No. M2001-01965-COA-R3-CV, 2002 Tenn.App. LEXIS 571, at *6-7 (Tenn.Ct.App. Aug. 7, 2002); ***In re Estate of Key***, 1999 Tenn.App. LEXIS 201, at *12-13. If allowed to stand, our holding in ***Estate of Divinny*** and its progeny would render these provisions meaningless.

Id. at 7-8 (footnote omitted).

Although the ***Estate of Luck*** case is distinguishable from the case at bar, in that ***Estate of Luck*** did not involve a claim made by the State, we nonetheless find that our reasoning in ***Estate of Luck*** is on point with the present case. As noted above, although we concede that the Bureau is acting in its official capacity in seeking reimbursement for medical assistance paid on behalf of Ms. Henkel, *nullum tempus occurit regi* does not relieve the Bureau from exercising due diligence by timely filing its claim against an open estate, or by seeking, on its own motion, to open the estate.

Under T.C.A. 30-2-310(b), the Legislature has been more than generous with the State by allowing it a full year (as opposed to the usual four-months) in which to file any claims against an estate. However, from our reading of this statute, *in pari materia,* we conclude that the Legislature did not intend the time for filing any claim or demand against an estate (other than for taxes) to extend beyond one year. The 2000 amendment adding T.C.A. 30-2-310(b) clearly evinces the Legislature's intent to include claims by the state in this time limit.

While we have reviewed Appellant's alternate arguments, we find them unpersuasive in light of the foregoing analysis. Consequently, and in the interest of brevity, we decline to include discussion of those theories herein.

For the foregoing reasons, we affirm the order of the trial court, barring the Bureau's claim as untimely under T.C.A. 30-2-310(b). Costs of this appeal are assessed against the Appellant, Tennessee Bureau of TennCare, and its surety.

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W. FRANK CRAWFORD, JUDGE